

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Escutia Analyst: Gloria McConnell Bill Number: SB 434

Related Bills: None Telephone: 845-4336 Amended Date: 03/26/03

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agency Investigations & Hearings

SUMMARY

This bill would amend the Government Code. The provisions in this bill relating to investigations by prosecuting attorneys or the Attorney General (AG) of unlawful activity would be declaratory of existing law. Additionally, the bill would set forth rules relating to evidence, testimony, and the subpoenaing of witnesses in conjunction with court actions or administrative hearings.

Further, this bill would amend various provisions of the Corporate Securities Law of 1968 and California Commodity Law of 1990, neither of which affect the Franchise Tax Board (FTB) and, therefore, are not addressed in this analysis.

SUMMARY OF AMENDMENTS

These March 26, 2003, amendments make changes to the provisions in the bill as it was introduced, and add the provisions relating to the Corporate Securities Law of 1968 and California Commodity Law of 1990.

PURPOSE OF THE BILL

According to the author's office, this bill would clarify that all governmental agencies, even those outside California, may assist California's prosecuting attorneys and AG in investigations of unlawful activities. In addition, the office indicated this bill is to be part of a legislative package directed at corporate security laws.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2004.

POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director
Gerald H. Goldberg

Date
04/11/03

ANALYSIS

FEDERAL/STATE LAW

State and federal income tax laws contain specific provisions relating to the sharing of tax returns and return information. In general, all state and federal tax agencies, including those outside the state, may share tax information. State and federal law also has specific provisions relating to the issuance of process and subpoenas for purposes of tax administration, confidentiality of tax information, and violations thereof. For example, FTB has the specific authority to disclose tax returns or return information in certain judicial or administrative proceedings or to the AG in matters relating to tax administration.

THIS BILL

This bill would provide that the following is declaratory of existing law:

- Any agency, bureau, or department of other states or the United States may assist prosecuting attorneys or the AG in conducting an investigation of unlawful activity relating to their jurisdictions.
- Prosecuting attorneys or the AG may disclose documents or information acquired pursuant to an investigation to another office if that office agrees to maintain the required confidentiality relating to that document or information.
- Department heads may inspect certain specified items, copy those inspected items, and issue subpoenas for the production of any writing, as defined in the Evidence Code and for tangible things.
- Department heads may divulge information or evidence relating to investigations of unlawful activities discovered from specified documents and other information, including interrogatory answers and defined writings, to the AG or to any prosecuting attorney of other states, or the United States.
- Department heads may present information or evidence relating to the investigation of unlawful activity to a court or at an administrative hearing.

In addition, the bill would:

- Provide that any officer who improperly discloses information or evidence from specified documents and other information is guilty of a misdemeanor and is disqualified from acting in any official capacity in the department.
- Require department heads to follow existing laws and the state and federal constitutions when issuing and serving process and subpoenas.
- Require subpoenas for oral testimony to reasonably describe the matters to be examined and subpoenaed witnesses must be notified to bring qualified individuals to testify to those matters.
- Require subpoenaed witnesses to designate and produce at the hearing those natural persons most qualified to provide oral testimony at a location determined based on their place of residence or business location, or other location mutually agreed upon.
- Provide that the superior court in the county where investigations are conducted or testimony is given or items produced would have jurisdiction to compel answers to interrogatories and the production of specified documents and defined writings.
- Allow department heads to petition the court for an order to compel witnesses to answer interrogatories, attend and testify, or produce or permit the inspection or copying of papers or defined writings, and set forth procedures related to the petition.

IMPLEMENTATION CONSIDERATIONS

This bill would not affect the existing laws administered by FTB with regards to the disclosure of tax return information. FTB would continue to share tax information and divulge or present tax information only in cases affecting unlawful activity relating to tax administration.

OTHER STATES' INFORMATION

A review of *Florida, New York, Illinois, Michigan, Minnesota* and *Massachusetts* laws could not determine if their laws were comparable to the provisions proposed by this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

Departmental Costs

This bill will not have a fiscal impact on the department.

ECONOMIC IMPACT

Revenue Estimate

This bill would have no identifiable revenue impact under the Personal Income Tax and Corporation Tax Laws.

LEGISLATIVE STAFF CONTACT

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